

APPEAL NO. 040861
FILED JUNE 9, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on March 16, 2004. The hearing officer resolved the disputed issue by determining that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the 14th quarter. The claimant appeals this determination. The appeal file contains no response from the respondent (carrier).

DECISION

Affirmed.

The claimant attached new evidence to his appeal, some of which was not offered into evidence at the hearing. Documents submitted for the first time on appeal are generally not considered unless they constitute newly discovered evidence. Texas Workers' Compensation Commission Appeal No. 93111, decided March 29, 1993; Black v. Wills, 758 S.W.2d 809 (Tex. App.-Dallas 1988, no writ). Upon our review, the evidence offered is not so material that it would probably produce a different result. The evidence, therefore, does not meet the requirements for newly discovered evidence and will not be considered on appeal.

Section 408.142 and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102) establish the requirements for SIBs entitlement. At issue in this case is whether the claimant satisfied the good faith requirement of Section 408.142 by complying with the provisions of Rule 130.102(d)(2) and Rule 130.102(d)(4). It was for the hearing officer, as the trier of fact, to resolve the conflicts and inconsistencies in the evidence and to determine what facts have been established. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. App.-Amarillo 1974, no writ). The hearing officer found that the claimant had some ability to work during the qualifying period and, consequently, the claimant was not entitled to SIBs under Rule 130.102(d)(4). Additionally, the hearing officer noted that the claimant quit the college classes that he was taking¹ and, therefore, did not satisfactorily participate in a Texas Rehabilitation Commission program as provided for in Rule 130.102(d)(2). In view of the applicable law and evidence presented, we cannot conclude that the hearing officer's determination that the claimant is not entitled to SIBs for the 14th quarter is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The claimant takes issue with the hearing officer's Statement of the Evidence, wherein he recites that the claimant was taking five classes during the qualifying period;

¹ The claimant argues on appeal that he quit the classes after the expiration of the qualifying period. However, he testified that he quit on either March 11 or March 12, 2003. The parties stipulated that the qualifying period began on January 2, 2003, and ended on April 4, 2003.

two resulting in incompletes and three resulting in failing grades. The claimant states on appeal that he was enrolled in only four classes and the documentary evidence supports this assertion. However, the claimant testified that he was taking five classes and that he received one incomplete and four failing grades. The discrepancy in the Statement of the Evidence does not rise to the level of reversible error, as the basis for the hearing officer's decision is that the claimant quit the classes that he was enrolled in and that is supported by the evidence.

The claimant also requests in his appeal that the Appeals Panel require the carrier to reimburse the claimant for medications and pain management expenses. The Appeals Panel, however, is not the proper forum for making such a request.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **TEXAS PROPERTY & CASUALTY INSURANCE GUARANTY ASSOCIATION for Reliance National Indemnity Company, an impaired carrier** and the name and address of its registered agent for service of process is

**MARVIN KELLY, EXECUTIVE DIRECTOR
9120 BURNET ROAD
AUSTIN, TEXAS 78758.**

Chris Cowan
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Veronica L. Ruberto
Appeals Judge